

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 159 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

RAYAB JUSAB SAMA

Versus

STATE OF GUJARAT

Appearance:

MR EE SAIYED for Petitioner
PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE A.L.DAVE

Date of decision: 03/08/98

ORAL ORDER:- (Per R.K. Abichandani, J.)

1. The appellant challenges his conviction for the offences under Sections 489B and 489C of the Indian Penal Code and the sentence of 10 years rigorous imprisonment

and a fine of Rs.50,000/- for the offence under Section 489B and the sentence of 3 years' rigorous imprisonment and a fine of Rs.25,000/- for the offence under Section 489C under the judgment and order dated 31.1.1998 of the learned Additional Sessions Judge, Bhuj (Kutch) in Sessions Case No.76 of 1996.

2. The prosecution version is that on 9th April, 1996, at about 6 o' clock in the evening, the appellant was found in possession of 250 counterfeit Indian currency-notes of the denomination of Rs.100/- each, near Fire Station on a public road in the city of Bhuj, and further during the investigation on 12.4.1996, at 11 o' clock in the morning, he discovered 101 more such fake currency-notes of the denomination of Rs.100/- each, from the place where he had hidden them beneath a babool tree, near Rudramata. According to the prosecution, the accused had received and kept in his possession these 351 fake currency-notes with an intention to use them as genuine and thereby he committed offences under Section 489B and 489C of the Indian Penal Code.

3. There was also a charge framed against the accused to the effect that the said fake currency-notes were obtained by him by illegally entering Pakistan, from the secret agents of Pakistan and thereby, he committed offences under Sections 3 and 12 of the Passport Act, 1967 and Rules 3 and 6 of Passport (Entry in India) Rules, 1950. He has, however, been acquitted of this charge. The other charge which was framed against the accused was that he had illegally entered the notified area while bringing these fake notes from Pakistan and thereby committed an offence under Section 3(6) of the Criminal Law Amendment Act, 1961. That offence is also not establish, according to the trial Court, and the accused has been acquitted of that offence. The learned Additional Public Prosecutor has no information whether any acquittal appeal has been preferred against these two charges for which the appellant was acquitted. However, since these were distinct charges, we are not concerned with them in this appeal, which is filed against the conviction of the appellant for the offence under Section 489-B 489C of the Indian Penal Code.

3. The record and proceedings were called and have been placed before us during the hearing of this appeal. The learned advocate appearing for the appellant has taken us through all the relevant material on the record of the case.

4. The first contention of the learned advocate for the

appellant is that the informant of the case has not been examined. It was submitted that because the informant is not examined, it cannot be said that information was given about the person who was arrested. It was not compulsory on the part of the prosecution to have examined the informant. The matter is to be viewed from the evidence which is on record which cannot be brushed aside merely because the informant was not examined.

5. It was then contended that since the appellant has been acquitted of the charges under the Passport Act of having illegally entered and come back from Pakistan bringing the fake currency-notes, the very basis of the prosecution story is not established. As can be seen from the charges which were levelled against the appellant, the charge of his carrying the fake currency-notes on a public road near the Fire Station in the city of Bhuj concealed in a "Thela" and his having discovered the other fake currency-notes from a place where they were hidden by him and possessing the fake currency notes with an intention to use them as genuine is entirely a distinct and separate charge for the offences under Section 489B and 489C of the Indian Penal Code and it cannot be said that because the prosecution has not been able to establish his entry into Pakistan and return therefrom contrary to the provisions of the Passport Act, the basis for the aforesaid substantive and distinct charge for the offences under Sections 489B and 489C is gone. The offences under the Passport Act are entirely distinct offences from the offences under Sections 489B and 489C of the Indian Penal Code and, therefore, the submission of the learned counsel is misconceived.

6. It was then argued by the learned counsel for the appellant that only one Panch witness-Arvindsing was examined in support of the seizure which was effected on 9.4.1996 and the other Panch witness was not examined. Panch witness-Arvindsing has fully supported the prosecution version and has proved the Panchnama and his evidence and Panchnama cannot be discarded merely because the other Panch witness was not examined. When the Panchnama was proved and the Panch witness supported the prosecution version, no adverse inference can be drawn against the prosecution because the other Panch witness was not examined. Panch-Arvindsing, in his deposition at Ex.7, has stated that on 9.4.1996, at about 11.30 before noon, he was called as a Panch near the Fire Brigade office of the Bhuj municipality and the other Panch-Jignesh Joshi was also with him. He has stated that P.S.I. Joshi had told him that one person with

currency notes in a bag (Thela) was to pass and that they were to be Panch witnesses. It is stated that around 12 o' clock at noon, a person came from S.T. Stand towards the Fire Brigade office and P.S.I. Joshi, at that time, pointed out to this witness the man who was coming and said that they have to search him. P.S.I. Joshi stopped him and he had resisted a bit. He was wearing a Pathani dress and having two "Thelas", one in each hand. On physical search, a coin of the denomination of 50 paise of Pakistan currency was found from him. On searching the two bags (Thelas), from one such rexine bag, two cloth pieces were found and below these cloth pieces, there was a plastic bag and on opening that plastic bag, currency-notes of the denomination of Rs.100/- were found therefrom. There were 250 such currency notes. When the currency-notes were seen across the light, it was noticed that while in the original currency, the seal was affixed straight, it was appearing horizontal in the fake currency-notes. Furthermore, from the same bag, currency-notes of same number and same series were also found. He has stated that the Panchnama Ex.8 was prepared as dictated by the Panch witnesses and after it was read, they had affixed their signatures. In the cross-examination, this witness has asserted the same facts. He has denied the suggestion that the Panchnama was prepared in the LCB's office and that they had signed it at the instance of P.S.I. Joshi. The Panchnama Ex.8 records the particulars of the search and seizure and the numbers of all the 250 currency notes which were seized from the appellant at the time when he was carrying them concealed in a bag (Thela) near the Fire Brigade office on a public road at Bhuj. The prosecution has been able to clearly establish from the deposition of this Panch witness and the Panchnama as also supported by the deposition of P.S.I. Joshi that the said 250 notes were recovered from the appellant while he was carrying them at the time and place mentioned in the charge.

7. As regards the 101 more such fake currency-notes discovered on 12.4.1996, there is deposition of Panch-Soni, at Ex.30, who has fully supported the prosecution case. It was tried to be contended that there was discrepancy of the name of the appellant in the deposition of this witness. But that contention has no merit for the simple reason that this witness, who has given the name of the appellant as "Yusub" and not as "Rayab Jusab Sama" has, in terms, stated that the said person is the person who was sitting in the Court as the accused. He had identified the accused in Court as that person. He has given particulars of how they went at the instance of the appellant to the place where the

appellant got down and went near the babool tree, removed a stone which was two and a half feet wide, from which place a leather container was taken out in which there was a plastic bag having 101 currency-notes of the denomination of Rs.100/- each. He has stated that the water mark of national emblem was seen upside down in these currency-notes. He has stated that a Panchnama, which is at Ex.14, was drawn in respect of the said discovery, which was effected at the instance of and by the appellant before this Panch witness. He has stated that the other Panch-Pratap was also accompanying them. It was contended that the accused could not have made the discovery because he was handcuffed. There is no substance in this contention because in paragraph 8 of his deposition, this Panch witness has, in terms, stated that at the time when they reached the place showed by the appellant, his handcuffs were removed. The deposition of this witness and the Panchnama which is at Ex.14 which records all the material particulars of the discovery with the numbers of the fake currency-notes mentioned therein coupled with the deposition of Inspector Joshi fully support the prosecution version that 101 fake currency notes were discovered at the instance of the appellant on 12.4.1996 from a place where he had hidden them.

8. The prosecution has examined P.S.I. Balwantrao Asari, who has stated that he had forwarded the muddamal in sealed covers to Devas Currency Press through Additional D.G., C.I.D. Crime (Railways). He has also stated that, after the currency-notes were examined, the report in respect of these muddamal notes was received by the office. The forwarding letter Ex.22 was written on 4.6.1996 by this witness and the expert opinion on the suspected bank notes from the Government of India Bank Note Press, Devas is at Ex.24. It is stated in that report that the main water mark in the notes was imitated and the security thread was also imitated. Though texture of the notes was as per a genuine note, less number colours had been used as compared to genuine notes. It is also stated that the numbering did not match with the genuine numbering and the quality of printing was not as per the genuine notes. The conclusion reached was to the effect that all the notes of Rs.100/- denomination under reference, which were received in a sealed condition and were sent back in a sealed condition, were counterfeit notes and that the front side and back side portion of the notes had been printed separately and pasted together. From the above evidence on record, the prosecution has, in our view, clearly established that all the currency notes which

were seized from the appellant on 9.4.1996 and all the currency-notes which he discovered on 12.4.1996 from the place in which he had hidden them, were counterfeit currency-notes.

9. Here we may note that the defence of the appellant is of total denial and in his statement under Section 313 of the Code, he produced a certified copy of a First Information Report dated 13.5.1996 in respect of a similar offence. In the list Ex.29, with which the said certified copy was produced, it is mentioned that another false case was filed against the accused. This list bears his left thumb impression and was ordered to be recorded by the learned Additional Sessions Judge as per his endorsement and initial. This list shows that the appellant had, as per his statement under Section 313 of the Code, produced the copy of the complaint. This complaint was filed by the bank official on an allegation that someone had deposited in the bank two fake currency-notes of the denomination of Rs.100/- each bearing numbers OAR 592399 and 2CM 583552 on 30.1.1996. It will be interesting to note that another currency note bearing the same number - No.OAR 592399 - which was said to have been produced before the bank on 30.1.1996 is also there at serial number 69 of the list accompanying the report at Ex.24. Therefore, currency-note of the same number and denomination as the one recovered from the accused was deposited in the bank.

10. The learned counsel for the appellant contended that the prosecution had failed to prove the offence under Section 489B of the Indian Penal Code even if it is held that the offence of possession the fake currency-notes under Section 489C is proved. This submission is wholly erroneous because the evidence clearly establishes that the appellant was found carrying 250 fake currency notes on a public road in the city of Bhuj concealed in a Thela beneath cloth pieces as alleged in the charge. He was, therefore, transporting the said currency notes at the time when he was apprehended with them. Therefore, this is not a case of mere dormant possession, but, it is a case of active transportation of the currency notes, which would fall within the expression 'traffics in such currency notes'. Section 489B of the Indian Penal Code clearly contemplates the cases where the counterfeit currency-notes are received from any other person as also the cases where a person traffics in such currency-notes knowing or having reason to believe the same to be forged or counterfeit. In our opinion, these ingredients of the offence under Section 489B are clearly established against the appellant. He

was not only carrying 250 counterfeit currency-notes on 9.4.1996 but he had concealed 101 other such counterfeit currency-notes which he later discovered before the Panchas on 12.4.1996. It is, therefore, clearly established that the appellant was trafficking in these counterfeit currency-notes which he had received from some source. The appellant is, therefore, rightly held guilty of the offences under Sections 489B and 489C of the Indian Penal Code by the trial Court and we are in complete agreement with the reasoning adopted by the trial Court for reaching its conclusions on this count. We are not concerned in this appeal, as noted above, with the offences under the Passport Act for which the accused was acquitted.

11. It was finally submitted by the learned counsel appearing for the appellant that the appellant is having three daughters and he was poor person and, therefore, the sentence of 10 years rigorous imprisonment was a harsh one. The offences of counterfeiting currency-notes for using them as genuine, trafficking in them and possessing them are offences of grave nature and cannot be lightly viewed. Such offences vitiate the economy of the country and are a matter of serious concern. They are rarely detected and all that is ultimately proved is perhaps the tip of an iceberg. The offence under Section 489B prescribes imprisonment for life as the maximum punishment which itself shows the seriousness with which the Legislature has viewed the offence. Having regard to the facts and circumstances of the case, we do not find that the sentence that is imposed is disproportionately severe as submitted by the learned counsel. We find it to be a sentence which has been properly imposed and which is the minimum which should be imposed in this case. The appeal is, therefore, dismissed.

[R.K. ABICHANDANI, J.]

[A.L. DAVE, J.]

gt